Daragan

A F T E R N O O N S E S S I O N

2:01 p.m.

K A R E N D A R A G A N,

resumed, having been previously duly sworn, was examined and testified further as follows:

THE VIDEO OPERATOR: It is now 2:01, and we are back on the record.

CONTINUED EXAMINATION

BY MR. PAYTON:

Q. Ms. Daragan, I would just ask you a few questions that I forgot to ask you about the collection of E-mails. I've forgotten what exhibit number that is.

A. 3.

Q. Can you look at the second page of that. There is an E-mail, the first full E-mail, from Victor Han, date February 4, to Carraro. It begins with "Shirley Arnott in Richmond got the call." Do you see that?

A. Yes.

Q. In the body of that E-mail there is a reference to a Dave. Do you see it? "Dave will be talking to reporter again to discuss conditions, guidelines, et cetera." Do you see

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that?

A. Yes, I do.

Q. Do you know who Dave is?

A. Probably Dave with RJR.

Q. Who is that?

A. An official, who works with the two other people I mentioned earlier.

Q. Works with Maura Payne and Peggy --

A. Carter.

Q. Carter. Is that one of the people that you also talked to occasionally about this story, Day One?

A. I did not speak with him.

Q. You spoke to Maura Payne?

A. With Vic I spoke with Maura Payne, yes.

Q. And could you turn to page 8. Do you see the heading "Note for McCormick, Brendan," the first one, from Shirley Arnott, March 7? Subject, Day One draft statement.

A. Yes.

Q. There is a line that is not on any of the other E-mails. It says "Files," and then it says "Media statement for Vic."

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A. Yes.

Q. Am I right that that means there's a file attached to this electronic mail?

A. Yes.

Q. That would be the media statement for Vic, apparently?

A. It wouldn't be attached, as you would think attached would mean. But there would be a separate document enclosed.

Q. A separate document enclosed. And does this mean that when this was created, printed out, I take it on the 18th of March, that that file still existed?

A. I don't know that, the answer to that question. It could have, or it could have been deleted. I don't know.

Q. Do you know what the media statement for, I take it, Victor Han was?

A. I do not.

Q. You told me earlier that when you first looked at the February 25 statement that Philip Morris released about the, I guess, upcoming Day One story -- is that right? Was that the point of the --

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A. Which statement are you referring to?

Q. The February 25, the Friday statement. It was about the upcoming Day One story?

A. It was our statement in response to Mr. Bogdanich's previous phone call.

Q. Exactly. That's what I meant.

A. Yes.

Q. That when you first looked at that, you thought it wasn't responsive, and after a conversation with Mr. Han, he explained to you that it was responsive; is that fair?

A. Yes.

Q. Your conversation with Mr. Han in which he told you that the statement was responsive to the issues and questions that Mr. Bogdanich had communicated to you, did that occur before any telephone conversation that you had with Mr. Bogdanich on Friday, February 25?

MS. ROBBINS: There's no testimony that she did have a conversation with Mr. Bogdanich on Friday, the 25th.

Q. I thought you said you had a brief conversation with him in which you talked about

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having sent him this statement.

A. I believe I said to the best of my recollection I confirmed that he had the statement.

Q. Right.

A. But couldn't recall what was discussed in that conversation, except to say that it was probably very brief.

Q. Do you recall whether or not the conversation you had with Mr. Han about the responsiveness of the February 25 statement occurred before you had that conversation, however brief it was, with Mr. Bogdanich?

A. I recall that it was before I faxed the statement to Mr. Bogdanich, so it would be before the conversation.

Q. Do you have any memory of Mr. Bogdanich in that brief conversation telling you that he did not believe the statement was responsive?

A. I don't have specific recollection of that.

Q. Was that the understanding you had from whatever conversation you had with him on

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that day?

A. Yes.

Q. And do you recall any response, or is that when you said that's our statement, our statement is our statement?

A. Yes.

MR. PAYTON: Sorry for the delay, but I have misplaced something.

Q. What sorts of functions did Brendan McCormick perform in February of 1994 for the division? What did he do?

A. He was an intern. Answered initial phone calls from reporters and others looking for information, passed along those messages to myself and the other manager, as well our director in the group. And weekly reports, and other types of research. Basic assignments. Support.

MR. PAYTON: Let me have this marked as Daragan 9.

EXB (Daragan Exhibit 9 for identification, document entitled "Media Affairs Activity Report.")

Q. I just had marked a document that has

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Bates number PA 426968, and it is headed "Media Affairs Activity Report."

Have you seen this before?

A. Yes.

Q. This is one of the regular things that is produced in the division for ongoing activities of the division, I take it?

A. On a weekly basis we put together a weekly activity report.

Q. I can't figure out the exact date of this document, but it has a reference to something that happened on March 1. Do you see that? In the third bullet it has something that references March 1. So I have assumed, you can tell me if this is wrong, that this is the weekly report for February 28. That's a Monday. If this is a weekly report.

A. This would have been for the week of February 28. Was that what you said?

Q. Yes.

A. It was probably done that Friday or Monday, the 7th.

Q. The second bullet in this reads, "Drafted response to Day One program which

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accused tobacco companies of manipulating nicotine levels in cigarettes." Do you see that?

A. Yes.

Q. Do you know what that's referring to?

MS. ROBBINS: What the response is, is that the question?

MR. PAYTON: Yes.

Q. There is a document, that it is referring to a response. Do you know what document?

A. I don't. I believe, since this is somewhat in chronological order, that that is referring to the March 1 statement.

Q. And who prepared the activity reports at that time, do you know?

A. They were prepared sometimes simultaneously and sometimes individually by Brendan McCormick and Tara Carraro, with the help of our two secretaries.

Q. Do you remember seeing this at the time?

A. At which time?

Q. That week, the next week; in March of

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1994.

A. Yes.

Q. And am I right that this is the only description of the Day One program that was created by your division?

MS. ROBBINS: Well, I object to the form of the question.

Q. I had asked you earlier if you wrote a memo on the program or if anyone else had written a memo, and I think you said no, you couldn't remember doing that. This is the only description of the program that I've seen. I am just asking if you know of any other descriptions of the program.

MS. ROBBINS: I guess what I was objecting to is your use of the word "description." There are other media activity reports and documents like that that have senses ~~or refer~~ referring to the Day One show.

MR. PAYTON: That's fair. I will phrase it more carefully.

Q. I'm not talking about entries in records that are referring to the show, you know, got a telephone call, returned telephone call.

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This appears to be characterizing the report. Are you familiar with any other characterization of the report?

MS. ROBBINS: I repeat my objection.

A. I believe that the report was characterized on March 1 in interviews done about the report by Steve Parrish. There was also a letter that was sent to Congress, signed by Bill Campbell, our president and CEO, that characterized and referred to the report.

Q. I was asking a narrower question. I understand that. I'm asking whether or not the department, division, media affairs, ever characterized the program in a way -- is this the only characterization? I understand the other characterizations.

MS. ROBBINS: In documents like media reports?

MR. PAYTON: Yes, or memoranda, or E-mails.

A. You're asking in writing?

Q. Yes, in writing, yes, or an E-mail, whatever you want to call that.

MS. ROBBINS: I still object to your

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characterization of this as a characterization of the Day One show.

I don't know if you understand what he's asking.

A. I can't recall anything specifically, but we would have had to have characterized the program after it aired, in E-mails and in the documents that I referred to earlier.

Q. So you think there are E-mails about the show, that are created after the show runs, that describe or characterize the Day One broadcast?

A. After the Day One broadcast, there was so much activity, there were so many calls coming in, that I said that there would have had to have been characterizations. I used E-mails as an example, but I don't know specifically any E-mails that come to mind.

MS. ROBBINS: And, John, your question said so that you think there are E-mails about the show that were created after the show that characterized them. Her previous answer before that question was, "I can't recall anything specifically but we would have to have

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characterized the program." She doesn't say anything about E-mails about the show. That's your language, not hers.

MR. PAYTON: It says E-mails.

MS. ROBBINS: She said E-mails, I understand that, but she is not saying in her answer E-mails about the show. That's your language, not her language.

Q. So in E-mails, whatever they are about, do you recall any E-mails which contain characterizations of the Day One broadcast?

A. As I said before, I don't recall any specifically, but we received numerous calls from reporters after the Day One broadcast. It would be only natural to refer to the Day One broadcast with some form of characterization, either one that was provided by the reporters who were inquiring, or one that was provided by the writer of the note.

Q. Aside from the routine deletion of files that happens in your E-mail system, that I understand you to have testified about -- that they are not kept but for so long, you are not sure, but at some interval they're deleted.

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Aside from that, have you or your secretary, anyone in your division, been asked to delete E-mails in this time period?

A. Not that I recall. There is a technical issue in that you can only keep so many E-mails on your memory, and I forget the term that's used, but it kind of slows down the whole E-mail system if you save too much stuff. So, for that matter, people from information services sometimes request for notes to be deleted. But during this time period, I don't recall.

Q. No request to delete any files that related specifically to the Day One program, was there?

A. No.

MS. ROBBINS: John, I would just like to say, the document that you showed Ms. Daragan, which is Daragan 9, if you turn to page PA 426971, for instance, it's a media affairs call report and it says "Highlights," and it postdates the show, and it talks about the show.

MR. PAYTON: I'm coming to that.

MS. ROBBINS: All right. You have asked her a question about characterizations, and

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you have used the word in a certain way. In my lexicon, this would be a characterization in the same way, if you want to use that word, so that the bullet point you showed her is a characterization. So I think when you say that you have never seen another one, and there is one sitting in an exhibit that is in front of her that she hasn't looked through, that that's misleading.

MR. PAYTON: No, it's not misleading. I was going over E-mails right now, and I was coming right to this one.

MS. ROBBINS: No. But your initial question wasn't about E-mails. ~~You say~~ It was about in any place has your department characterized it. And sitting in the very exhibit that is in front of her, which she had not completely looked through, is -- if you are going to call the other a characterization, I think you would have to call this a characterization, whatever we mean by that word.

So I think it's misleading to say that you have never seen one when this is sitting in a document of many pages that you have

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actually placed in front of her.

MR. PAYTON: All right.

MS. ROBBINS: We have also produced many, many, many, many pages of these meeting reports, and I don't know what's in -- I mean, I haven't studied all of them that closely. I don't know what is in the other ones.

MR. PAYTON: Well, I have looked at, or we have collectively looked at all of the E-mails, all of them.

MS. ROBBINS: Are you calling this document an E-mail?

MR. PAYTON: No, I'm not.

MS. ROBBINS: I'm talking about media reports.

MR. PAYTON: But I am asking her about E-mails when you interrupted me.

MS. ROBBINS: Okay. But I'm going back to a prior question.

MR. PAYTON: Don't go back too far. I was asking about E-mails, and the representation that I was making was that I wasn't aware of an E-mail. Now, I was about to go into the rest of this document, and I

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certainly did not intend anything by what I was focusing on. And I will go right to this.

Q. Are you aware of any E-mails that I've missed that purport to characterize the show?

MS. ROBBINS: I'm sorry. If you go on your screen to page 152, line 7, the question that I'm speaking about was, "Am I right that this," pointing to the document that you showed her which was not an E-mail but a media affairs report, "Am I right that this is the only description of the Day One program that was created by your division?" There was nothing in there about E-mail. That was the nature of my objection. Later you began talking about E-mails, and you can ask her whatever you would like to ask her about E-mails. But what I'm talking about is something different. I'm talking specifically about a bullet point in a media affairs report, and you're saying that that was the only one that you were aware of, and I'm saying if you keep flipping there is another one, if you want to use the word characterization, at page 426971. That's my point.

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MR. PAYTON: All right. But no E-mails?

MS. ROBBINS: I'm not saying anything about E-mails. I'm talking about a question that you asked and a representation that you made in a question, and pointing out to you that the representation simply isn't accurate. I don't even know where the discussion about E-mails was left, to be honest. I wasn't -- my objection didn't go to anything about E-mails. It went to the particular question and answer that we just talked about, or question.

Q. With respect to the E-mails, you, I take it, can't think of any, but you think that it's something that could be in an E-mail, characterization of the Day One broadcast?

A. What I said was after the Day One broadcast, we had received so many calls from other reporters about the program that it would be only natural that there would be a characterization written into their request, or included in their verbal requests, because that's why they were calling about the program. So either the reporter characterized the program, or

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whoever got the request would have paraphrased their characterization or written down their own characterization.

Do I know of any specifically? No.

Q. Turn to the one that Ms. Robbins just directed your attention to. It is at 426971. Do you see that? And it is media affairs call report for February 25 through March 4. And, again, this would have been prepared by Ms. Carraro or Brendan McCormick?

A. Or both together.

Q. Or both together. Okay.

And this is a description of the Day One show; right? Do you see that, first sentence? A piece, "On Monday, February 28, ABC's Day One program ran a piece alleging that tobacco companies add nicotine to their products in an effort to addict consumers."

A. This is a statement about the activity that week, resulting from the program on the 28th.

THE VIDEO OPERATOR: It is 2:27. This is the end of Tape No. 2 of the deposition of Karen Daragan. It is now 2:28, and we are off

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the record.

(Discussion off the record.)

THE VIDEO OPERATOR: Today is March 15, 1995. This is the beginning of Tape No. 3 of the deposition of Karen Daragan. It is 2:33, and we are back on the record.

Q. With respect to this first sentence on the media affairs call report that I was just asking you about, that ABC's Day One program ran a piece alleging that tobacco companies add nicotine to their products in an effort to addict consumers, Philip Morris clearly had a position about whether or not nicotine was addictive, didn't it?

A. Yes.

Q. And it was that it wasn't addictive?

A. That's correct.

Q. It is that it isn't addictive?

A. That's correct.

Q. Had you made any inquiries within Philip Morris to see what the basis of that position by Philip Morris was about nicotine being addictive or not addictive?

MS. ROBBINS: At this time?

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MR. PAYTON: At that time.

MS. ROBBINS: At this time.

A. No, I did not.

Q. Have you ever made inquiries about the basis for Philip Morris' position that nicotine is not addictive?

A. No, I did not.

Q. Do you have any personal experience about nicotine and its addictive nature? Do you smoke?

A. No, I don't.

Q. Have you ever smoked?

MS. ROBBINS: I think these questions are irrelevant. I don't know why her personal smoking habits, if she has any, are relevant.

MR. PAYTON: If she smoked, I think it would be relevant, because she would have firsthand experience with nicotine. If she doesn't, I agree with you.

MS. ROBBINS: I don't agree with you, but I will let her answer the question and then we can see if we have a fight about it.

Q. Have you ever smoked?

A. I have.

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Q. How long did you smoke?

A. A couple of years, and still occasionally have a cigarette.

Q. And is it your personal view that nicotine is not addictive?

MS. ROBBINS: I object. It's irrelevant. You can answer the question.

A. Yes, it is.

MR. PAYTON: Let me have this marked as Daragan 10.

EXB (Daragan Exhibit 10 for identification, document entitled "Philip Morris Responds to Allegations that the Company Adds Nicotine to its Products, Communications/Media Followup Report.")

Q. I have just handed you a document that's been marked Daragan No. 10. Mine has, I think, a fax line at the top, which I believe is March 2, '94, 19:17. Do you see that?

A. I don't know if that says March 2, but I see what you're referring to. It could be March 3. I don't know.

Q. It could be March 3, I agree with you. I'm just trying to place this in time,

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because it does not otherwise have a date on it.

"Philip Morris Responds to Allegations that the Company Adds Nicotine to its Products, Communications/Media Followup Report." Do you recognize this?

A. I do.

Q. Who created this?

A. I really don't know.

Q. Was it created in your division?

A. I don't know. Probably, because we would have been the people involved in these things.

Q. Have you looked through it?

A. I haven't looked through the whole thing.

Q. Just turn through it. I am not directing your attention to anything. I just want you to turn through it so you know what's in it.

Have you seen these other pages before?

A. I don't really recall.

Q. Is there another division or department that could have produced this?

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A. I don't believe so. I was not in the office during this time, so my recollection of documents would be from after, not when they were used.

Q. Were you not in the office this whole week?

A. Just the beginning of the week.

Q. Just the beginning of the week. Okay. So if this is March 2, and if you look at the next pages, I think it's clear that it's March 2, this may have been produced before you came back to the office?

A. It more than likely was created prior to my return at the office.

Q. What's a B-roll? Do you see that on the bottom of page 2?

A. The folks at ABC could probably tell you better than I. But it's an electronic media term for background footage. The back end attached to a video news release is usually footage that television news stations can use if they just want to use soundbites, individuals, you know, bits and pieces, rather than a video news release about a complete package, with

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voice-over and all. So SOT's are sound on tape and B-roll is background footage, the audio and the video.

Q. Who would the audience for something like this have been, do you know?

A. I don't.

Q. After the broadcast ran on February 28, Monday, when you weren't there, did you after that broadcast ran have another telephone conversation with Mr. Bogdanich?

A. Between the first broadcast and today?

Q. Yes.

A. Yes, I did.

Q. Do you recall when that was?

A. I recall it was the day of the third Day One broadcast, which would have been March 14.

Q. And what do you recall about that telephone conversation?

A. I recall that he phoned me. He was not pleased with a response that we had faxed over to him from Steve Parrish, which responded to earlier questions that he had communicated to,

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I believe, Tara Carraro, to the best of my recollection, for that evening's broadcast.

Q. Do you recall anything else in the telephone conversation?

A. He asked me if the document that I sent over was meant to substitute for an on-camera interview request. I told him yes, that the document that was faxed over was responsive to his questions, that we were not going to provide an on-camera interview because we did not want to subject someone from senior management to the bias previously experienced in Day One's broadcasts, and the lack of objectivity and responsible journalism that we saw in their previous broadcasts.

Q. Could the letter that he asked you about have been the letter that William Campbell had issued in response to the ABC broadcast? Does that refresh your recollection?

MS. ROBBINS: Just let me object, that there is no foundation that there is any question about a letter. But you can answer the question.

Q. I thought you talked about his

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reaction to a letter that you said Mr. Parrish sent him.

A. Yes.

Q. Could it be that the letter that you were discussing with him was, in fact, the letter that Mr. Campbell, the head of Philip Morris, had sent to, I think it was like an open letter?

A. No, it could not. He called me about a letter that we faxed personalized to him, signed by Steve Parrish.

Q. Was there a discussion of the Campbell letter? Do you know what I'm talking about, the Campbell letter?

A. Yes.

Q. Did you have any conversation with Mr. Bogdanich about the Campbell letter as well?

A. Yes. When he had initially called and spoke with Tara earlier in the day, he was looking for verification of authenticity of the Bill Campbell letter. He was also looking for an on-camera interview in response to something Senator Waxman had said in a pending investigation.

Q. The Bill Campbell letter had not gone

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to ABC; is that right?

A. The Bill Campbell letter that we are now referring to was a letter from Bill Campbell to members of Congress.

Q. And did you authenticate the Bill Campbell letter to Mr. Bogdanich?

A. I did. My recollection is that I called and left Mr. Bogdanich a voice-mail message, which verified the authenticity of the letter he had, which he had faxed us, and told him that I would be faxing a letter from Mr. Parrish.

Q. He faxed you a letter to ask you to verify the letter?

A. Yes. He didn't fax to me, but we, as I said before, got a call from him earlier, asking for verification of the letter, asking for an on-camera interview in response to Waxman. I phoned him back, provided him with the former and declined on the latter, and faxed a statement.

MR. PAYTON: Let's have marked as Daragan's next number.

EXB (Daragan Exhibit 11 for identification, interoffice correspondence from

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Tara Carraro to Victor Han, dated March 14, 1994.)

Q. Let me ask you what I handed you. Did I hand you two copies of a document or just one?

A. Just one.

Q. The document I have just handed you, I think it's six pages, and it has as its cover a memo from Tara Carraro to Victor Han, dated March 14, 1994, with handwriting on it, and a number of attachments.

A. That's correct.

Q. Do you recognize this?

A. Yes, I do.

Q. What is it?

A. It's no more than what you just said. It's a memo from Tara to Vic about her conversation with Walt Bogdanich and his request for the evening's program.

Q. And he wants -- the two things that he says he wants on here are the response to Waxman's call for an investigation, on-camera response, and the second is the verification that a letter from Bill Campbell is authentic, the two

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things you had mentioned?

A. That's correct.

Q. Do you know whose writing this is? It doesn't look like it's all the same person's, but can you recognize any of it?

A. I believe some of it might be Victor Han's.

Q. Which would you think would be Victor Han's?

A. The bottom, at the bottom of the page.

Q. "Campbell letter is authentic," that?

A. Yes.

Q. The "Since we don't add," do you see that? Do you know whose writing that is?

A. Yes.

Q. You think that's also Victor's?

A. Yes.

Q. And if you go to the third page, there is a letter from William Campbell, that is actually not addressed to anybody, just Dear blank, and it's not signed. Do you see that?

A. Yes.

Q. Is this the letter that they were

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seeking to have authenticated?

A. Yes, it is.

Q. And your understanding is this was a form letter to members of Congress?

MS. ROBBINS: I object to the form of your question.

Q. Do you know, was this a form letter to members of Congress?

A. What do you mean by form letter?

Q. This letter was used --

A. This was a letter that was sent to Congress.

Q. And the next letter or document that's attached to this again is on the letterhead that is William Campbell's. It is also dated March 3. It's "Dear," and it's blank again. And we have two pages without a signature line.

Do you know what this letter was and who it was to?

A. I believe it's one and the same letter. You just have it out of order.

Q. You think that this is page 1 and 2, and the first one is pages 1 and 3?

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A. Yes.

MR. PAYTON: Ms. Robbins, I guess I want to ask you, and not the witness, if you can tell me the nature of the material that's redacted at the top of this. I don't want to ask her if you're going to assert a privilege.

MS. ROBBINS: Yes, there is a small redaction based on attorney-client/work product privilege, a handwritten note that would go into that, very small handwritten note, that would fall into that category. I can't tell you why it's stapled this way with a page missing. I just don't know.

MR. PAYTON: Let me mark as the next exhibit. Ms. Robbins: It's Daragan 12 Mr Payton: Yes

MS. ROBBINS: Isn't that what we just marked?

MR. PAYTON: It is. It's a clean version, and it does have the pages in order. I just wanted to know the answer. I was confused about the attached pages and the order.

EXB (Daragan Exhibit 12 for identification, interoffice correspondence from Tara Carraro to Victor Han, dated March 14,

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1994.)

MR. PAYTON: Again, Ms. Robbins, I don't want to ask the witness a question when I think you should tell me the answer. The nature of the material that's redacted at the bottom?

MS. ROBBINS: I'm comparing the two copies. I don't know whether the material redacted at the bottom is different material from this material, and if it's not, then I don't know whether this is improperly produced because this is, in fact --

MR. PAYTON: It's a different document. It's numbered differently.

MS. ROBBINS: I understand that. But it may still be just another copy of the same document. I can try to find out and get back to you.

MR. PAYTON: Daragan 13, I believe.

EXB (Daragan Exhibit 13 for identification, letter from Mr. Parrish to Walt Bogdanich, dated March 14, 1994.)

Q. I have asked that the next document be marked as Daragan 13, and it is a March 14 letter, 1994, from Steven Parrish to Mr.

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Bogdanich. This is the letter you were referring to earlier?

A. Yes, it is.

Q. And this is Mr. Parrish's response to the question relating to whether or not -- to his reaction to Representative Waxman's request that the Justice Department investigate tobacco companies?

A. That's correct.

Q. Do you know whether or not at this time Philip Morris had decided to file this lawsuit?

MS. ROBBINS: At what time are we talking about?

MR. PAYTON: This time, March 14, 1994.

A. I do not know.

EXB (Daragan Exhibit 14 for identification, document entitled "Philip Morris Statement, March 1, 1994.")

Q. The next document is dated March 1, 1994, "Philip Morris Statement," and it is a statement issued by Philip Morris, obviously.

Do you recognize this?

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A. Yes, I do.

Q. And, again, this was, I take it, created and issued when you were away from the office that week?

A. Yes, it was.

Q. Just the day before this, February 28, Philip Morris had issued a statement. Do you know what occasioned this additional statement?

A. The statement that you just referred to, that was released on the 28th, was released before the ABC Day One broadcast. This statement was put out on the wire the day after the ABC Day One broadcast, in response to inquiries that we were also receiving that day after the broadcast.

Q. Would you take a look at this quickly. I want you to look at it yourself, but I direct you to the second paragraph, and the followover. It looks like the only direct reference is to FDA Commissioner Kessler.

MS. ROBBINS: Direct reference to what?

MR. PAYTON: To any stimulus that resulted in this statement being issued.

MS. ROBBINS: The document says what

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it says. The document doesn't say that FDA Commissioner Kessler was or wasn't a stimulus. It does refer to Commissioner Kessler, but it certainly doesn't say anything about a stimulus.

Q. You still believe it was in response to the Day One broadcast and not Commissioner Kessler?

A. I view that as one and the same, because the ABC broadcast absolutely led to Kessler's release of his letter and this issue.

Q. If Kessler's letter was released on the 25th and the ABC broadcast was on the 28th, how could ABC have caused Kessler's letter to be issued?

A. I can only answer that question based on what Kessler said in his letter, which was information had been brought to his department's attention, and the credit that ABC Day One took for the letter in its broadcast.

Q. Is this Philip Morris' view or your view?

A. Both.

Q. So it's your view and Philip Morris' view that the Kessler letter was, what, caused by

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ABC?

A. The release of the Kessler letter was caused by the ABC broadcast, and his investigation was prompted by the ABC broadcast. And, again, I base that on what Kessler said in his letter, and what ABC said in its Day One broadcast.

Q. Would you take a look at Commissioner Kessler's letter, which is one of the exhibits in front of you. I simply don't remember the number. February 25.

Do you see it there?

A. Yes, I have the letter.

Q. The letter in the first paragraph is addressing, as the Commissioner says, several petitions from the Coalition on Smoking or Health, seeking to have the FDA regulate low-tar and low-nicotine cigarettes and denicotinize cigarettes as drugs. Do you see that?

A. Yes, I do.

Q. Are you aware of the background that results in this letter being sent by Mr. Kessler to the Coalition on Smoking or Health?

MS. ROBBINS: I object to the form of the question.

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A. Can you please repeat the question?

Q. Are you aware of the background that results in the Commissioner sending this letter to the Coalition on Smoking or Health?

MS. ROBBINS: I just repeat my objection. You can answer the question, but I'm objecting to the form of the question, the assumptions embedded in the question. You can answer.

MR. PAYTON: I will ask another question.

Q. Are you familiar with the petitions from the Coalition on Smoking or Health that Commissioner Kessler is referring to in this first paragraph?

A. Only in the news stories that I read.

Q. Are you familiar with the petitions that Commissioner Kessler is referring to in this first sentence?

A. Only what I read about in the news.

Q. And was it Philip Morris' view that ABC was behind those petitions in some way?

A. I don't know what Philip Morris' view

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was on that.

Q. Was it your view?

A. I don't have a view on it.

Q. What did you mean when you said you thought that this letter was somehow provoked by ABC?

A. On the second page in this letter, in the first complete paragraph, this first sentence reads, "Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction on the part of some of their customers." I have a recollection that ABC took credit for that statement in this letter.

Q. This paragraph that you just testified about, the first full paragraph on the second page, the second sentence says, "The possible inference that cigarette vendors intend cigarettes to achieve drug effects in some smokers is based on mounting evidence we have received that: (1) the nicotine ingredient in cigarettes is a powerfully addictive agent and (2) cigarette vendors control the levels of

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nicotine that satisfy this addiction."

Do you know if Philip Morris, in fact, controls the level of nicotine that is in its cigarettes?

MS. ROBBINS: I will object to the form of the question.

A. I only know that Philip Morris has numerous cigarette brands, with different nicotine levels, and they're all printed on the packs and the ads. Based on that, I know that there must be a way --

Q. To reach that level of nicotine?

A. Yes.

Q. So what remains is whether or not number 1 is right, which is the nicotine ingredient in cigarettes is a powerfully addictive agent?

MS. ROBBINS: I object to your characterization of what remains that can be right in your question.

MR. PAYTON: I will withdraw the question.

Q. With regard to number 1, the nicotine ingredient in cigarettes is a powerfully

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addictive agent, did you know whether or not the FDA was looking into whether or not nicotine was addictive?

A. I did not.

Q. Did you know whether or not the Surgeon General had already determined that nicotine was addictive?

A. I read news reports about the Surgeon General's report on nicotine and addiction.

Q. Is that a yes, you knew that the Surgeon General had concluded that nicotine is addictive?

A. I didn't read the Surgeon General's full report so I don't know his full conclusions, but I certainly read news reports that the Surgeon General believed that nicotine was addictive. We're talking about a former Surgeon General.

Q. Yes, the 1988 Surgeon General's report on nicotine addiction.

Are you aware of any other information that could support your testimony that ABC is responsible for this letter?

A. If we reviewed the transcript of the

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Day One program, I could show you where ABC claimed that it was responsible for Kessler's interest in this subject and his resulting investigation into whether cigarettes should be regulated as drugs or not.

MR. PAYTON: Have this marked.

EXB (Daragan Exhibit 15 for identification, transcript.)

Q. I have marked the transcript, I think this is from your files, and I believe what you are referring to -- you can look through the whole thing, if you like, but I believe it is on the second page, which is the first page of the actual transcript of the show, in the first paragraph. And what we have is a transcript made by, I think, a private company, of the February 28 Day One broadcast.

A. That's right.

Q. And am I right that the sentence that you are referring to is the sentence that reads, "Late last week, when word of our investigation got out, the Food and Drug Administration announced it is now considering whether to regulate cigarettes as drugs"?

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A. "And Congress is planning to hold hearings on the issue next month, hearings that could be the first step toward a ban on cigarettes as they are now manufactured," yes, that's correct.

MS. ROBBINS: There are sentences before the sentence you read, John, that describe the investigation, which for the sake of completeness ought to be included in this.

MR. PAYTON: I will read it. This is the quote from the broadcast. "For nearly --"

MS. ROBBINS: I'm just saying it references an investigation, and there is language talking about the investigation in the earlier sentences. That's all I'm saying. That's fine.

Q. Am I right that this is the transcript that is from your files? Do you recognize this? There is some writing in here. Let me take you to some of the writing. If you go to page 4 of the transcript, there is some writing on the right side of the page. Is that your writing?

A. Yes.

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Q. Why did you insert "Artificially spiking"? The sentence reads, "Why are you adding nicotine to your cigarettes," and you have added "artificially spiking."

A. I don't recall exactly, but I believe when I watched the broadcast for a second time I was following along with this transcript and wrote that in because it appeared to me that the same question -- that the same response was given to two questions, asked two different ways.

Q. And so why did you put this here?

A. It was just my note, that that was the question. I believe that the difference is in the teaser, which is the first page of this transcript. The third paragraph --

Q. The teaser has "Why are you artificially spiking?"

A. That's right.

Q. But the question back here doesn't.

A. That's right. And that's why I made that note. Martin is asking why are you artificially spiking your cigarettes with nicotine. Unidentified Man No. 2, who I believe is Joseph, I don't know how to pronounce this

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last name, RJR scientist involved in tobacco research, whose response is, "We are not in any way doing that." And this response for Unidentified Man No. 2 is "We are not any way doing that." I made a note that it was a different question, same answer.

MS. ROBBINS: Are you done with this line? You asked Ms. Daragan whether the sentence she was referring to was a particular sentence. Are you going to ask her whether there are any other places in the transcript that --

MR. PAYTON: Sure. I will ask her that. I actually thought I was -- I believe what I did was I said I thought this was the sentence that she was referring to.

MS. ROBBINS: That's my problem. I don't know whether she had other things in mind.

Q. Take a look at the transcript and tell me if there are any other places in here.

MS. ROBBINS: You want her to sit here and read it?

A. If there are any other places in here that --

Q. That caused you to believe that

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somehow ABC was responsible for the Commissioner's letter issued February 25.

MS. ROBBINS: You want her to take the time to look through it?

MR. PAYTON: Why don't we take a short break. I actually need the break, anyway.

THE VIDEO OPERATOR: It is 3:21, and we are off the record.

(A recess was taken.)

THE VIDEO OPERATOR: It is 3:42, and we are back on the record.

BY MR. PAYTON:

Q. Did you find any other reference in there that you would like to bring to my attention?

A. Yes. On page 8 of the transcript, John Martin is speaking, first full paragraph, second sentence, "Several months ago, when we tried to get a reaction about all of this from the Food and Drug Administration, the agency declined comment, but immediately sent out investigators to look into the matter on their own. Then, learning of our Day One broadcast tonight, the FDA sent out this letter on

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Friday: Quote, 'evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their product contains nicotine to satisfy an addiction.' That's why the FDA says it may have a legal basis on which to regulate these products.'"

Q. Anything else?

A. No.

Q. That's it?

A. Yes.

Q. In March of 1994 the FDA, Commissioner Kessler, I believe, personally was invited by Mr. Campbell to send a group of technical persons from the FDA to visit Philip Morris. Are you aware of that?

A. Yes, I recall that.

Q. Were you involved in setting that up or participating in that trip or any followup from that trip by the FDA personnel to Philip Morris?

A. Not that I recall. I was aware of it, and that was the extent.

Q. Were you involved in the exchange of letters? Are you aware of -- I can show you

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these, but my memory, which I believe is pretty close to right here, is that Mr. Campbell wrote a letter that was printed in the New York Times on March 15. Mr. Kessler wrote a letter to Mr. Campbell, commenting on his letter to the New York Times, and Mr. Campbell wrote Mr. Kessler a letter saying, "Please come visit."

Were you involved in that exchange in any way?

A. Again, I was aware of it, but was not involved in the creation of any of those letters, or in the correspondence.

Q. Did you know that during the FDA's trip to Philip Morris, I believe this was in March, late March, there were questions asked by the FDA about Philip Morris' use of tobacco extracts? Were you aware of that?

A. No, I wasn't.

Q. And just to finish that out, so you weren't aware of any responses that were made by Philip Morris to those questions?

A. While the FDA was at Philip Morris?

Q. Or in connection with those trips.

A. No, I'm not.

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Q. In the fall of 1993, and I think for the rest of 1993, September, October, November, December, there was correspondence from a law firm acting on behalf of Philip Morris and other tobacco companies, and the CDC --

A. I'm sorry, what time period is this?

Q. This is September '93 through December '93. There's correspondence between the CDC and a law firm acting on behalf of Philip Morris, and other tobacco companies, about nicotine as an additive or ingredient in cigarettes. Are you aware of this correspondence?

A. Not that I recall.

Q. Let me just ask you, just to finish out some earlier part of your testimony, you testified that you weren't in the office on February 28 and I believe on March 1. I want to ask you a very narrow question. I want to know if you were out of the office for personal or business reasons.

A. Personal reasons.

Q. What I would like to do is I'm willing to mark these, but I simply want to know

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if you recognize or have ever seen these documents. So I'm going to mark them.

EXB (Daragan Exhibit 16 for identification, letter dated January 19, 1994, to Michael P. Eriksen, from Stanley L. Temko, with attachments.)

Q. This is a January 1994, I think I originally said '93 but it's been corrected to say '94, letter from a lawyer at a law firm named Covington & Burling, to someone at the Centers for Disease Control.

Do you recognize this letter? Have you ever seen this letter?

A. Not to my recollection, no.

Q. Did you often receive or ever receive correspondence that was marked confidential like this?

A. Not that I recall.

Q. Are you familiar with the law firm of Covington & Burling?

A. Yes, I am.

Q. Do you remember having any conversation with anyone there late February? If you notice, at the top of this, the fax line --

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the date of the letter is January 19, 1994, but the fax line is February 24, 1994. Do you see that?

A. Yes, I do see that.

Q. Do you recall having any discussions with anyone at Covington & Burling?

MS. ROBBINS: Just answer yes or no. You can answer his question, but just answer yes or no.

A. No.

MR. PAYTON: I want to try to add two other documents to this that I believe should be in the same exhibit. I believe they were all faxed at exactly the same time and were one fax thing.

MS. ROBBINS: I will take a look at them, sure.

MR. PAYTON: I actually think they should all be 16.

MS. ROBBINS: Could I see the pages, John, to be sure that's so?

MR. PAYTON: Yes. That's it. No, That's for the--to go with the one I already handed you, and I believe the witness already has three ~~documents~~ documents."

MS. ROBBINS: It would appear that's correct, based on the numbers on the fax line on

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top. I'm not representing that I know it to be true, but it would appear that that's correct.

Q. I don't want to mislead you. I don't believe that you will have any different answer, but since it looks like they were all together, you ought to look at all of them, to see if you recall ever seeing these.

A. No, I do not recall seeing any of these documents.

Q. Do you recall ever hearing that in December of 1993 Philip Morris stopped using some form of tobacco extract for public relations reasons?

A. No, I do not recall.

Q. Do you recall ever hearing that in March of 1994 Philip Morris stopped using some form of tobacco extract for public relations reasons?

A. I recall hearing that.

Q. Who did you hear that from?

A. From actually the lawyers here.

Q. I see.

MS. ROBBINS: Can I ask you to clarify your question? Are you asking her

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whether in March she heard that in March Philip Morris stopped using a form of tobacco extract or that in March she heard it about some other time?

MR. PAYTON: No, I am actually asking whether she ever heard, ever heard, that Philip Morris in March of 1994 stopped using some form of tobacco extract in cigarettes it made, for public relations reasons.

A. If I've ever heard that to date?

Q. Yes.

A. Yes, I have.

Q. And apart from the lawyers involved in this litigation, have you heard it from anyone?

A. No, I have not.

Q. Were you shown any documents to that effect?

A. Not that I recall.

Q. What did the lawyers tell you about it?

MS. ROBBINS: I object. If you are calling for what would be privileged information -- if you had conversations with

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lawyers about this, then those conversations are privileged, and you should not be answering questions with respect to conversations you had with lawyers.

MR. PAYTON: I mean, you have to tell me, I think you have to tell the witness, too, was that information exchanged in the course of a privileged conversation?

MS. ROBBINS: The problem is I don't know what conversation she's talking about.

MR. PAYTON: I see. That's a problem.

MS. ROBBINS: I don't know. So if you want us to take a break, I can ask her what she is talking about and then we can come back and answer it.

MR. PAYTON: Go ahead. That's fine.

MS. ROBBINS: Let's take a break.

THE VIDEO OPERATOR: It is 3:56, and we are off the record.

(A recess was taken.)

THE VIDEO OPERATOR: It is 4:01, and we are back on the record.

MS. ROBBINS: I've spoken with Ms.

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Daragan, and, as I understand it, the information that she had on the subject was communicated to her in a privileged conversation.

BY MR. PAYTON:

Q. You mentioned at the very beginning, I think, of the deposition, something about the Washington relations office. What is that? Of Philip Morris.

A. I don't recall mentioning that at the beginning of the -.

Q. I thought you did. But, anyway, what is it?

MS. ROBBINS: Is there such a thing would be the question.

MR. PAYTON: It's the only place I got this.

A. We have an office in Washington, D.C., that is charged with federal-related matters, federal legislative matters, called the Washington relations office.

Q. Does your department have a relationship with them, a working relationship with them?

A. Only in that we're part of the same

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company and deal with similar issues.

Q. Did you play any role in the drafting of the motion for judgment, the complaint in this case, or the amended motion for judgment, amended complaint in this case?

A. No, I did not.

Q. Did you see any drafts?

A. No, I did not.

Q. Did you play any role in the setting up or the execution of the press conference on March 24 that announced the filing of the lawsuit in this case?

A. Yes, I did.

Q. What was your role?

A. I was the point person in New York. We had held a simultaneous briefing for New York City media and analysts, and I was the point person coordinating that effort.

Q. Did you prepare any of the materials that were created for the purposes of that press conference, the Q and A's, the draft Q and A's?

A. No, I did not.

Q. Did you prepare anything -- I mean, I understand you had a role during the press

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conference; is that what you're saying?

A. Yes.

Q. Did you play any role up to the very press conference, in putting together the press conference or creating any of the materials that related to the press conference?

A. Yes. In making sure the press kits were assembled, all the materials were in order, all of the logistics were sound, and coordinated communications that would occur after the press conference, to make sure that employees knew and others knew what our position was on this lawsuit that was going to make news.

Q. Who did prepare the materials, the Q and A and the draft Q and A's and other materials that were related to the press conference, do you know?

A. I don't believe it was any one individual.

Q. Was it your department?

A. Vic Han would have been involved, and probably worked with legal counsel.

Q. Tell me again what your role was during the press conference itself. You say you

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were the New York coordinator. What does that entail?

A. The press conference was in Washington, D.C., and we had a simultaneous press conference viewing. We fed the press conference in via satellite to the New York office, and we invited New York City media and analysts to the briefing.

Q. You took care of all those technical arrangements?

A. Yes.

EXB (Daragan Exhibit 17 for identification, document entitled "BL Plant Flow Diagram," with attachments.)

Q. Let me hand you this. What I've handed you is a set of documents that I believe came from Victor Han's files. But there is a writing on the first page which was not there when we got it, and it should not be there, and that is the writing at the top that says "Han." That was placed there by us, but it was not on the original.

MR. PAYTON: Did you follow me on that, Barbara?

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MS. ROBBINS: Yes, I did.

Q. Would you take a look through here? The question I'm going to ask you after you have looked through it is whether or not you have ever seen any of these materials before.

A. Not that I can recall.

Q. Sometime after the Day One broadcast in February -- I'm just trying to place it in time -- Philip Morris changed its view towards how -- I'm groping for a word here, but open it should be or responsive it should be to the press. Is that correct?

MS. ROBBINS: That's a question?

MR. PAYTON: Yes, that's a question.

MS. ROBBINS: I will object to the form of the question. If you understand what he means by it, you can answer.

A. Can you repeat the question, please?

Q. Sure. I can read it.

Sometime after the Day One broadcast in February, to place this in time, did Philip Morris change its view towards the press and how it responded to the press?

MS. ROBBINS: I object to the form.

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Go ahead.

A. No. I believe there was a change in Philip Morris' view of how it viewed and responded to the press, but it was prior to the Day One broadcast.

Q. When do you think it was?

A. I would have to say, to the best of my recollection, two years ago.

EXB (Daragan Exhibit 18 for identification, copy of article in The New York Times, Wednesday, April 20, 1994.)

Q. Ms. Daragan, I have marked as the next exhibit an April 20, 1994 article from The New York Times, entitled "Tobacco Industry Tries a New Pitch: Openness."

Have you seen this before?

A. Yes, I have.

Q. This article is about how Philip Morris began a new approach to the press shortly after the Kessler letter of February 25, 1994, and certainly read this to see if I have accurately reflected this, but I think that's what it's about.

Do you remember the change that is

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discussed in this article?

MS. ROBBINS: Without characterizing the change, just referring to the article?

MR. PAYTON: Right, without characterizing it.

A. I personally believe there was a change in the way we went about media relations with our new management. The New York Times Magazine article that's referred to in this was the beginning, and then it took off from there, based on the number of issues we were dealing with as a corporation.

Q. Do you know when the New York Times Magazine article was?

A. I do not. We could find that out.

Q. I have it.

EXB (Daragan Exhibit 19 for identification, interoffice correspondence dated March 31, 1994, from Ellen Merlo, Subject: New York Times Sunday Magazine Cover Story.)

Q. I have just handed you a copy of the New York Times Magazine article, and the article ran on March 20, 1994, in the New York Times Magazine. The cover sheet here is the Philip

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Morris interoffice correspondence that distributed the article.

This is the article you were talking about?

A. Yes, it is.

Q. In the first article I showed you, in The New York Times, the April article, there is a quote by Mr. Parrish on the second page. It's the first paragraph in the second column, first full paragraph. It reads, "A year ago we would not have considered doing that." And that is making their executives available for the article that appears in the New York Times Magazine. Do you see that?

A. Yes.

Q. He says, "'A year ago we would not have considered doing that,' Mr. Parrish said, referring to the cooperation on the project. 'Two years ago, the feeling at the company was the less said about Philip Morris, the better. We knew we would never get a fair shake so why should Philip Morris be accessible? Whatever was said was going to be negative. But then we realized that if we didn't speak out, how could

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we be critical if a story does not give our side?'"

Were you aware of this change in your division?

A. Yes.

Q. How did it become manifest to you?

A. Well, in two ways. First, in the number of issues and inquiries and things we were dealing with, and, two, in our actions, and the number of satellite media tours, the number of interviews done via radio, not just from people in my department, but senior management, all the way up to the president and the chairman and the CEO making themselves available.

Q. Making them available?

A. Yes. And the series of advertisements that we bought in order to get our point of view and beliefs across to the public.

Before when I said that it was in the past two years, I didn't even realize, it's only been a year. It's been a long year.

Q. What do you know about Marlboro Express?

MS. ROBBINS: How is this relevant?

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MR. PAYTON: It's certainly relevant to nicotine, and nicotine delivery.

MS. ROBBINS: How is it relevant to this case? That was my question.

MR. PAYTON: If Philip Morris is trying to -- actually I don't want to give the explanation in front of the witness. I don't have a lot of questions, but I think it's clearly relevant to what we are calling the motivation and knowledge aspect of this case. I am speaking somewhat in code on purpose.

MS. ROBBINS: I understand what you're saying. What time frame are you talking about?

MR. PAYTON: I don't know the answer.

MS. ROBBINS: Maybe begin by asking the witness about time frame, because if your questions go to a point after the cutoff date that we have been operating under, which is March 24 of '94, then presumably that ends the issue.

MR. PAYTON: I will ask the question that way. I don't accept the restriction, but I will ask it that way so you can make your

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argument.

Q. Prior to March 24, the day this lawsuit was filed, 1994, did you have any knowledge, any knowledge, of what is referred to as Marlboro Express?

A. Yes, I did.

Q. And could you tell me what you knew about Marlboro Express?

MS. ROBBINS: I'm going to make a relevance objection.

A. My best recollection is that it was one of many concepts or ideas that were proposed prior to April 1993 which related to a price promotional program and the pricing issue that Marlboro was faced with at the time.

Q. What happened in April '93?

A. It's known as Marlboro Friday, when Philip Morris lowered the price of its premium products.

Q. How did Marlboro Express relate to Marlboro Friday?

A. As I said before, I only know --

MS. ROBBINS: I'm objecting again on the grounds of relevance. I don't see how this

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is relevant to this case.

A. I only know of it because we received an inquiry from a reporter about it, and was told that it was just one of numerous ideas and concepts that were being considered, but one that was not pursued.

Q. Did the reporter indicate that Marlboro Express had something to do with accelerated nicotine delivery?

A. No.

Q. Did the reporter indicate what he or she, the reporter, thought Marlboro Express was supposed to do?

A. No.

Q. Did you make inquiries of Philip Morris as to what Marlboro Express was?

A. Yes, I did.

Q. And what did you learn?

A. That it was nothing more than a concept and/or an idea. It wasn't anything real or existing.

Q. What was the idea?

MS. ROBBINS: Again, so I don't do it after each question, I'm objecting to this entire

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line of questions.

THE WITNESS: I think that would probably be competitive trade information. I don't know if that's even relevant in this --

MR. BOOKER: If it is, we have things we can do with the transcript.

MS. ROBBINS: If you are waiting for me --

MR. PAYTON: Yes.

MS. ROBBINS: If what you are saying is your answer would contain competitive or trade secret information, then we can designate that portion of this transcript as trade secret and there's a protective order which will protect that information. Is that what you're telling me?

THE WITNESS: Yes.

MS. ROBBINS: Let's then designate this portion of the transcript as trade secret, and we will listen to the answer and make sure that that's appropriate.

MR. PAYTON: Fine.

MS. ROBBINS: I would like to know what the question is again.

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Q. What did you learn from whoever at Philip Morris about what the Marlboro Express concept was?

A. While I have to reiterate how I don't see how it's relevant here, because my knowledge of what this reference was had nothing to do with the subject matter and had everything to do with pricing. The concept, and the reason why I'm saying it's competitive is it was a concept for a new product that would be offered for a lower price, because it was a shorter cigarette.

EXB (Daragan Exhibit 20 for identification, E-mail from March 17, 1994, consisting of two pages.)

Q. I have just handed you a two-page document, which is an E-mail and an inquiry from the press relating to Marlboro Express, dated March 17, 1994, and it's to you. Do you recognize this? Do you remember receiving this?

A. I don't recall receiving this particular inquiry.

Q. This was produced in this litigation by Philip Morris.

The press inquiry on the second page

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is that the reporter, I assume, Mr. Philips, but I'm not sure, but it reads, "Mr. Philips has heard of a new cigarette," and in parens, "(perhaps it is merely a prototype at this point) which is half the length, but contains the same amount of nicotine, as a normal cigarette. The idea is that it's for smokers who are being forced to smoke outside on their short breaks."

And the question is, "Does Philip Morris know anything about the planned manufacture of this product?"

Is this the inquiry that you recall being asked by a member of the press about Marlboro Express?

A. We received more than one inquiry about that subject matter. I don't recall this one specifically.

Q. When you followed up, who did you follow up with?

A. Our marketing department.

Q. And did your marketing department tell you whether or not the idea that's contained in this question is accurate, that is, a cigarette that is half the length and contains

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the same amount of nicotine as a normal cigarette?

A. No, because I didn't ask the question, because I knew the answer.

Q. What's the answer?

A. As I told you, the concept was one that involved pricing and length, and had nothing to do with this.

Q. How did you know it had nothing to do with this?

A. Because this had become an issue prior to this date. I don't know how many months before, a year before, I don't recall exactly. But this came from out-of-the-blue after the Day One broadcast. The concept was an old one, and it was developed for very different reasons.

MS. ROBBINS: When you said this, you meant this inquiry that we were just talking about? You said "this" in your last answer, when this came, you said.

THE WITNESS: I don't know. I don't remember. What did I say exactly?

MR. PAYTON: That this came out-of-the-blue after the Day One broadcast.

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A. This inquiry.

MS. ROBBINS: That is my question.

A. This inquiry about this subject matter in this context.

MS. ROBBINS: That's Exhibit 20 that we're talking about.

Q. Let me just make sure what you're saying. You did not inquire, on the basis of this inquiry, as to whether or not Marlboro Express was the same amount of nicotine in half the cigarette?

A. That's correct.

Q. But you believe from earlier familiarity with this that it was about something else, the concept of Marlboro Express?

A. Yes, that's correct.

Q. But no one ever told you that it was or wasn't about the same amount of nicotine in half the length?

MS. ROBBINS: I think that mischaracterizes her answer.

A. That's correct.

MR. PAYTON: We would like to take four minutes. We believe we have almost nothing

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left. This is just to make sure we didn't forget a little stitch here and there.

THE VIDEO OPERATOR: It is 4:29, and we are off the record.

(A recess was taken.)

THE VIDEO OPERATOR: It is 4:40, and we are back on the record.

EXB (Daragan Exhibit 21 for identification, multi-page document entitled "Chronology of Materials Provided to ABC's Day One.")

MR. PAYTON: I just had marked as Exhibit 21 a multi-page document that is entitled "Chronology of Materials Provided to ABC's Day One."

Q. Have you seen this before?

A. Yes, I have.

Q. Did you prepare this or assist in the preparation of this?

A. No, I did not.

Q. Was it prepared in your department?

MS. ROBBINS: Does this refer to the whole document?

MR. PAYTON: Yes, the whole

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document.

A. I believe someone in my department prepared this, yes.

MS. ROBBINS: There's a Covington & Burling letter as part of this. You just mean did somebody put these together in a package and put this cover sheet on it?

MR. PAYTON: Yes.

MS. ROBBINS: Okay.

MR. PAYTON: The document is a chronology of materials provided to Day One, and then it lists three things, and then attaches them.

MS. ROBBINS: Okay.

Q. The question I have is, do you know why the February 28 statement which, as I understand it, was the first things provided to Day One, is not listed?

MS. ROBBINS: I think you mean the February 25 statement?

MR. PAYTON: I'm sorry, the February 25 statement. I do mean that.

Q. Do you know why it is not included?

A. No, I do not. I don't know why this

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compilation was created.

Q. You don't know the audience that this was for?

A. It could have very well been an audience of one. It could have been an individual in the department who was trying to keep track. This doesn't look like a formal document of any nature.

Q. And they may have just missed the first February 25 statement?

A. Or maybe didn't have it. Or maybe it was a chronology of materials provided to ABC's Day One, you know, beginning February 28. I don't know.

MR. PAYTON: Thanks a lot.

(Continued on next page.)

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THE VIDEO OPERATOR: It is 4:43. This is the end of Tape No. 3, and this concludes today's taping of the deposition of Karen Daragan. It is 4:43, and we are off the record.

(Time noted: 4:43 p.m.)

Karen Daragan

KAREN DARAGAN

Subscribed and sworn to before me this 18th day of March, 1995.

Ingrid Schleimer

INGRID SCHLEIMER
Notary Public, State of New York
No. 41-4863614
Qualified in Queens County
Commission Expires 6/23/95

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Daragan

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, JACK FINZ, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That KAREN DARAGAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of March, 1995.

JACK FINZ, C.S.R.

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[Ngl]philip morris-daragan 3-15 **EXB**

> PAGE 23 LINE 17 1 MATCH

23 17 **EXB** (Daragan Exhibit 1 for
18 identification, document entitled Media Calls,
19 February 10-17, 1994.)

==> PAGE 30 LINE 14 1 MATCH

30 14 **EXB** (Daragan Exhibit 2 for
15 identification, letter to Dr. Andrew Saul, from
16 John Nelson, dated July 23, 1992.)

==> PAGE 37 LINE 25 1 MATCH

37 25 **EXB** (Daragan Exhibit 3 for
2 identification, ten-page document, electronic
3 mails.)

> PAGE 61 LINE 21 1 MATCH

61 21 **EXB** (Daragan Exhibit 4 for
22 identification, handwritten notes produced from
23 Victor Han's notebook.)

=> PAGE 97 LINE 20 1 MATCH

97 20 **EXB** (Daragan Exhibit 5 for
21 identification, interoffice memo from Victor Han
22 dated February 25, 1994.)

> PAGE 124 LINE 7 1 MATCH

124 7 **EXB** (Daragan Exhibit 6 for
8 identification, interoffice correspondece from
9 Victor Han, dated February 28, 1994.)

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[Ngl]philip morris-daragan 3-15 **EXB**

=> PAGE 128 LINE 3 1 MATCH

128 3 **EXB** (Daragan Exhibit 7 for
4 identification, fax cover sheet dated February
5 25, 1994, with attachments.)

===> PAGE 131 LINE 24 1 MATCH

131 24 **EXB** (Daragan Exhibit 8 for
25 identification, copy of letter to Scott Ballin,
2 from David Kessler, dated February 25, 1994.)

===> PAGE 150 LINE 22 1 MATCH

150 22 **EXB** (Daragan Exhibit 9 for
23 identification, document entitled "Media Affairs
24 Activity Report.")

===> PAGE 165 LINE 12 1 MATCH

165 12 **EXB** (Daragan Exhibit 10 for
13 identification, document entitled "Philip Morris
14 Responds to Allegations that the Company Adds
15 Nicotine to its Products, Communications/Media
16 Followup Report.")

===> PAGE 171 LINE 24 1 MATCH

171 24 **EXB** (Daragan Exhibit 11 for
25 identification, interoffice correspondence from
2 Tara Carraro to Victor Han, dated March 14,
3 1994.)

===> PAGE 175 LINE 23 1 MATCH

175 23 **EXB** (Daragan Exhibit 12 for

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identification, interoffice correspondence from Tara Carraro to Victor Han, dated March 14, 1994.)

===> PAGE 176 LINE 20 1 MATCH

176 20 **EXB** (Daragan Exhibit 13 for identification, letter from Mr. Parrish to Walt Bogdanich, dated March 14, 1994.)

==> PAGE 177 LINE 19 1 MATCH

177 19 **EXB** (Daragan Exhibit 14 for identification, document entitled "Philip Morris Statement, March 1, 1994.")

==> PAGE 185 LINE 8 1 MATCH

185 8 **EXB** (Daragan Exhibit 15 for identification, transcript.)

=> PAGE 193 LINE 4 1 MATCH

193 4 **EXB** (Daragan Exhibit 16 for identification, letter dated January 19, 1994, to Michael P. Eriksen, from Stanley L. Temko, with attachments.)

=> PAGE 201 LINE 13 1 MATCH

201 13 **EXB** (Daragan Exhibit 17 for identification, document entitled "BL Plant Flow Diagram," with attachments.)

> PAGE 203 LINE 10 1 MATCH

203 10 **EXB** (Daragan Exhibit 18 for

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identification, copy of article in The New York Times, Wednesday, April 20, 1994.)

===> PAGE 204 LINE 18 1 MATCH

204 18 **EXB** (Daragan Exhibit 19 for identification, interoffice correspondence dated March 31, 1994, from Ellen Merlo, Subject: New York Times Sunday Magazine Cover Story.)

===> PAGE 211 LINE 13 1 MATCH

211 13 **EXB** (Daragan Exhibit 20 for identification, E-mail from March 17, 1994, consisting of two pages.)

===> PAGE 215 LINE 9 1 MATCH

215 9 **EXB** (Daragan Exhibit 21 for identification, multi-page document entitled "Chronology of Materials Provided to ABC's Day One.")

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